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A NOVEL ADMIRALTY QUESTION. — In *North American Commercial Company v. United States*, 81 Fed. Rep. 748, the United States Circuit Court has lately passed upon a novel and interesting question in maritime law. A schooner had been forfeited to the United States for an infringement of the act of Congress of April 6, 1894, prohibiting the killing of fur seals within sixty miles of the Pribilof Islands, and the question was whether this forfeiture should defeat a maritime lien for necessities furnished in good faith in a foreign port prior to the illegal act. The maritime lien was given priority, the court proceeding upon the ground that such a lien is created to enable the vessel to reach her destination, and that it "would seriously impair the power of her master to procure supplies in a foreign port upon her credit if the material-man is to hold his lien subject to . . . forfeiture." There is apparently no previous authority upon the precise question decided in this case. *The Florenzo*, Blatch. & H. 52, which was relied upon by the court, can hardly be regarded as establishing the proposition, for it is not clear from the statement of facts whether the lien there arose before or after the illegal act causing forfeiture.

If the illegal act causing forfeiture creates a maritime lien, it is certainly difficult to see why the present decision is not inconsistent with the general rule of admiralty that the last lien has the preference. While no authority has been found for the proposition that the government has in reality a lien, this view is certainly strengthened by the fact that a maritime lien arising after an illegal act is given priority over the forfeiture. Furthermore, the decree of forfeiture relates back to the time of the illegal act, thus complying with the legal notion that a "maritime lien arises the moment the event which occurs creates it." Moreover, while priority cannot be given to the government as a lienor on the usual ground that the last lienor should be preferred because he has protected the prior liens by enabling the vessel to proceed on its journey, this is not, it is submitted, a fatal objection. The party who secures a maritime lien for damage by collision can in no sense be regarded as helping the vessel to reach its destination, yet surely such a lienor would have priority under the proper circumstances.

A difference of opinion seems to exist as to whether there is any distinction between a maritime lien and a right to a proceeding *in rem*. If there be no distinction, unquestionably the illegal act in the present case created a lien, for it gave rise to a proceeding *in rem* instituted by the government. Even, however, if there exist a difference, and the government has merely a right to a proceeding *in rem*, as distinguished from a true maritime lien, it is believed that the government should still have precedence. Certainly a strong analogy is furnished in the established rule that capture as prize of war overrides all previous liens. It is conceived, also, that were priority given to the government, masters in foreign ports would not experience the difficulties anticipated by the court in the case under discussion. Material-men would, of course, take into account the remote possibility of forfeiture, just as they do now the greater chances of being postponed to the ordinary maritime liens arising from the exigencies of the voyage, and they would unquestionably so regulate their prices as to cover the expense of insuring against this slight additional risk; but this clearly would not seriously interfere with the securing of supplies.